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# TRANSCRIPT OF RECORD.

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## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1887.**

No. ~~355~~ 89

THE NATCHEZ, JACKSON AND COLUMBUS RAILROAD COMPANY, PLAINTIFF IN ERROR,

*vs.*

JOHN M. STONE, WILLIAM B. AUGUSTUS AND WILLIAM McWILLIE, RAILROAD COMMISSIONERS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

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**FILED OCTOBER 9, 1885.**

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a Supreme Court of Mississippi. April Term, A. D. 1885.

Pleas and proceedings had and done at a regular term of the supreme court of Mississippi begun and held in the court-room, in the capitol, in the city of Jackson, on the 1st Monday, the 6th day, of April, in the year of our Lord one thousand eight hundred and eighty-five.

Present: The Honorable J. A. P. Campbell, chief justice, and the Honorable Tim. E. Cooper and the Honorable James M. Arnold, associate justices; also Oliver Clifton, clerk of said court, in person and by his deputy, C. C. Campbell; Wells C. Harrell, marshal, and Nicholas Francisco, porter.

Proclamation having been duly made, the court proceeded to the dispatch of business.

Be it remembered that heretofore, to wit, on the 20 day of October, A. D. 1884, there was filed in said supreme court a transcript of the record of a certain cause in words and figures following, to wit:

1 THE STATE OF MISSISSIPPI, *Hinds County:*

Pleas at a chancery court begun and held for said county at the court room thereof, in the city of Jackson, on the 15th day of September, 1884, before his honor E. G. Peyton, chancellor of the 9th chancery district, in the State of Mississippi, in the following-named cause, to wit:

NATCHEZ, JACKSON & COLUMBUS RAILROAD COMPANY
*vs.*
J. M. STONE *et al.*, Railroad Commissioners of Miss.

Be it remembered that heretofore, to wit, on the 15th day of September, A. D. 1884, being a day in said term, came on to be heard the above-entitled cause on demurrer, the papers and proceedings of which are in the words and figures following, to wit:

To the Honorable E. G. Peyton, chancellor and sitting in chancery for the first district of Hinds county:

The Natchez, Jackson and Columbus Railroad Company, a corporation of said State, complainant, brings this its bill of complaint against John M. Stone, William B. Augustus, and William McWillie, railroad commissioners, defendants; and thereupon your orator states unto your honor as follows:

Your orator is a corporation of said State, chartered under an act of the Legislature thereof, approved July 21, 1870, entitled "An act to incorporate the Natchez & Jackson Railroad Company," and is now engaged in operating a completed line of railroad between the city of Natchez, in Adams county, and Jackson, in Hinds county.

Under its charter your orator is authorized "from time to time to fix, regulate, and receive tolls and charges by them to be
2 received for transportation of persons and property" upon its railroad to be built or any part thereof. This power and authority to fix tolls and charges could not be exercised to impose

grievous burdens upon the people and under it neither "extortion" nor "unjust discrimination" could be successfully practiced. The courts of the State, as when organized, were open to all parties aggrieved, and redress was easy under the constitution and laws of the State. This right to regulate tolls for the use of its property and facilities is of great value to your orator, and is a right conceded to every property-holder in the State by the laws thereof. In view of this the said counties of Hinds and Adams have become the holders of five hundred thousand dollars and the city of Natchez of two hundred and twenty-five thousand dollars of the capital stock of your orator, and others have purchased the residue of this capital stock. None of this stock could have been sold or disposed of had it been supposed that the Legislature could deprive your orator of the power to fix its tolls and charges and vest in others, without interest in your orator's road, the absolute control of its tariffs.

While operating said completed line your orator is engaged largely in the business of interstate commerce, having for this purpose, its connections established with other carriers by rail and river, particularly for the transportation of cotton to New Orleans, Louisiana, or to eastern markets upon through bills of lading. At least one-half of its earnings grows out of this interstate traffic and commerce, and its domestic traffic, pure and simple, is of comparatively small importance. Such interstate commerce is wholly beyond the power of the State to regulate or control, the jurisdiction over the same being vested in Congress by the Constitution of the United States.

Your orator is advised, claims, and charges that under the common law, railroad companies have the right to make discriminations at competing points, and as between "wholesale" and
3 "retail" shippers, between car-load lots of freight and single articles.

They may discriminate justly as between classes of customers in different conditions in order to secure freight which they would otherwise lose, and they are only prohibited from making "unreasonable" discriminations, giving undue or unreasonable preferences or advantages. In violation of this public duty railroad companies are liable to actions at law by any person aggrieved. The equality which is justly to be observed in relation to the public and to every individual consists in the established right to charge in each particular case of service reasonable compensation and no more. If, for special reasons, in isolated cases, railroad companies see fit to stipulate for the carriage of goods or merchandize of any class for individuals for a certain time or in certain quantities for less compensation than what is the usual, necessary, and reasonable rate, your orator is advised, believes and charges they may do so without thereby entitling all other persons and parties to the same advantage and relief.

The rates of toll fixed by your orator are reasonable and the same have not been complained of seriously in any quarter by any of its patrons. Recently, under the discretionary power vested in it, your orator has made special rates of affreightment with the owners of the

"Coopers Well" property in order to bring about the rehabilitation of that "sanitarium" of the South, and is now engaged in carrying out the contracts conceding said special rates, and under them houses are being erected on said property and arrangements perfected for the reception and entertainment of guests.

Your orator had well hoped that it would be allowed to continue said contract and to pursue its business as a common carrier without let or hindrance, but now so it is at the last session of the Legislature an act was passed entitled "An act for the regulation of freight and passenger rates on railroads in this State and to create a commission to supervise the same, and for other purposes," the
4 consequence of which, if carried out according to its true intent and meaning, will be to prevent your orator from carrying into effect its said contract, and to disturb it in the enjoyment and use of its road so as to render the same unprofitable as well as to invite its creditors and patrons to withhold all aid of a pecuniary character that may be needed. By the first section of said act, after the declaration that the track of every railroad in this State is a public highway, over which all persons have equal rights of transportation, on the payment of just compensation to the owner of the railroad for such compensation, it is enacted "that any person or corporation engaged in transporting passengers or freight on any railroad in this State who shall exact, receive or demand more than the rate specified in any bill of lading issued by such person or corporation, or who, for his or their advantage, shall make any discrimination in transportation against any individual or corporation shall be guilty of extortion." This section, in terms, denounces "any discrimination" whatever, but does not undertake to define the meaning of the term or limit the penalty provided by the law to undue, unreasonable, or unjust discrimination.

By the second section of said act the party injured may recover of the person or corporation guilty of extortion, as thus defined, twice the amount of damages sustained by the overcharge or discrimination in any court having jurisdiction of the amount in controversy in any county where the person or corporation operating the railroad does business, thus denying to said railroad companies the protection of the general law of the State, which requires persons to be sued in the county of their domicile or residence, and putting them to great and unnecessary cost and expense.

By the third section of said act any person or corporation who shall commit extortion, as defined by said act, is made guilty of a misdemeanor of grave character and subjected to a fine of not less than ten nor more than five hundred dollars, but it therein
5 expressly provided that no corporation whose passenger rates and schedule of freight charges have been submitted to and approved by the railroad commissioners and complied with shall be guilty, whether there be discrimination in such rates or not.

By the fifth section of said act it is provided that no person who owns any stock in any railroad company shall be eligible to the office of railroad commissioner.

By the sixth section thereof it is made the duty of all railway companies, within thirty days after the passage of the act, to furnish the said commission with its tariffs of charges for transportation of every kind, and the commission is required to revise said tariff of charges and determine whehter or not and in what particulars, if any, said charges are more than just compensation for the services to be rendered, and whether or not unjust discrimination is made in such tariff of charges against any person, locality, or corporation, and to correct and approve the same; but, in revising such tariff, the railroad, its appurtenances and equipments, and to continue to revise such tariffs as justice to the public and the railroad company may require, and to increase or reduce any of said rates according as experience and business operations may show to be just. Said commission is required to fix tariffs of charges for railroads failing to furnish their tariffs. Railway companies are required to post the tariffs approved by the commissioners, and it is made unlawful for any corporation to make any rebate or reduction from such tariff in favor of any person, locality, or corporation which shall not be in favor of all other persons, localities, and corporations.

By the ninth section of the act the railroad commission is to be organized into an inferior court to hear and determine all complaints against railroad companies for exacting more than just compensation or making unjust discrimination, and when a conclusion is reached
it is to give notice of any changes deemed proper, but no
6 appeal is authorized from its decision to the supreme court
of the State. The proviso to said section exonerates from civil or criminal liability any railway company whose tariffs are not in violation of those fixed by the commission.

By the tenth section of the act the railway commission is required to have an office at the capital.

By the eighteenth section of said act it is made the duty of the commissioners to inspect the depots of the railroads operated in this State, and see that at least one comfortable and suitable reception room is provided at each depot for the use and accommodation of persons desiring and awaiting transportation on their lines; and any railroad company failing or refusing to provide such room, after sixty days' notice to do so, is liable to a fine of not less than fifty dollars a day for each day they so fail or refuse to provide such room; and railway companies are to have bulletin boards at all times in such reception rooms, which shall show the time of arrival and departure of trains, and when any passenger train or other trains for transporting passengers is delayed notice of the same shall be made on said bulletin board for the information of passengers, stating as nearly as can be ascertained the extent of the delay and probable time of arrival of the train delayed.

By the nineteenth section of the act proof of the determination of any matter by the commission is made *prima facie* evidence of its rightfulness, and the records of the commission are made public records.

By the twentieth section of the act the commissioners are authorized, in the discharge of any of the duties devolved upon them, to administer oaths, take affidavits, and summon and examine witnesses under oath in all matters coming before them, and if any person shall testify falsely before said commissioners he is to be deemed guilty of perjury.

7 By section twenty-one of said act the commission is authorized to issue summons for witnesses as any other court, and compel their attendance.

By section twenty-three of said act the violation of any of the provisions of said act by any railroad company is stated to be a crime punishable with fine of five hundred dollars, but the proviso to said section stipulates that in all trials of cases brought for a violation of the act it may be shown in evidence that the tariff fixed by the commission is unjust.

There are other provisions in said act which are not here inserted, to avoid perplexity, but a copy of the same act is herewith filed, marked Exhibit "A," and prayed to be taken as part of this bill to the same extent as if especially incorporated therein.

By a supplemental act passed at said session of the Legislature it was enacted, in substance, that the eighteenth section of said act, Exhibit "A," should not be construed so as to require railroad companies to build depots except at such points as they thought the public travel required, and that the act should not be so construed as to refer to or include tolls or tariffs for service wholly outside the State of Mississippi. A copy of said supplemental act is herewith filed, marked Exhibit "B," and prayed to be taken as part of this bill.

Your orator is advised, claims, and charges that the effect of said supplemental act, if the same be constitutional, is to impress upon the original act, so far as the Legislature can impress a meaning upon its own acts, the character of an act the purpose of which is to regulate or interfere with interstate commerce. Indeed, it was not necessary or proper for the Legislature of Mississippi to attempt the regulation of a tariff for the State of "Tennessee," and the declaration that this was not the purpose of the said original act was a work of supererogation unless it was intended to declare that the said act was to act upon and affect all commerce other than that excepted from its operation.

8 And your orator is advised, believes, and charges that the said act does, in terms, include all commerce beginning or terminating in this State, whether domestic or interstate, and is on that account in violation of article I, section 8, of the Constitution of the United States, which declares that "the Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Your orator is further advised, believes, and charges that the said act is in violation of article I, section 10, of the said Constitution as "impairing the obligation of the contract" contained in its charter and under which the right to fix the reasonable tolls to be exacted for transportation was and is conferred upon your orator as a corporation; and while the exercise of this right may be a proper subject of review by the courts, it can be done only in the mode equally as valuable for the protection of its property and rights and applicable to all carriers alike. Your orator is advised, believes, and charges that it was not competent for the Legislature to enact a statute that cuts off all right of appeal from the decisions of the commissioners thus clothed with the management of corporate property, and forces railroad corporations to violate the law and incur heavy penalties in order to secure a revision of the decision against them and which may be ruinous in its consequences, while express companies and all other corporations are unaffected. Aside from this, the assertion of any such power under a statute passed for the purpose would amount to a denial to railroad companies of the equal protection of the laws and be a violation of article XIV, section 1, of the Constitution of the United States.

By article I, section 9, of the constitution of this State it is provided that "no *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed," and, by article III, section 2, that
"no person or collection of persons, being one of these depart-
9 ments, shall exercise any power properly belonging to either
of the others, except in the instances hereinafter expressly directed or permitted," and by article VI, section 1, that "the judicial powers of the State shall be vested in a supreme court, and such other courts of law and equity as are hereinafter provided for in this constitution;" and by section 24 of the same article that "the Legislature shall from time to time establish such other inferior courts as may be necessary and abolish the same whenever they shall deem it expedient." All these provisions of the fundamental law of the State are violated by the said act to provide for the regulation of freight and passenger rates on railroads in this State, as your orator is advised, believes, and charges, for this:

1. The act gives to the commission the power to fix and determine the charges for transportation of persons and freight and deprives your orator of that right contained in its charter, and upon the faith of which its stock has been sold and disposed of.

2. The said act deprives your orator of all power to discriminate between competing and non-competing points and wholesale and retail shippers of freight, the said power being absolutely indispensable to the life and property of railroad corporations, especially when brought into competition with water transportation, and inherent in it at the time of its organization under its charter and recognized thereby.

3. The said act gives the said commissioners indirectly the power to dispense with penalties incurred by reason of its violations, thus trenching upon the prerogative of the Executive.

4. It gives them the power to fix and determine the maximum rates of toll to be charged by railroad companies and at the same time to hear and determine complaints, summon witnesses, and exert judicial powers.

5. It constitutes an inferior court and allows no appeal from its
decisions, thereby depriving the corporations of the power
10 and right to have the opinion and judgment of the supreme
court in matters vitally affecting their interest.

That under the terms of the charter of said corporation the

government and direction of the affairs of said railroad company, including the election of a president and all other officers necessary for the efficient control aud operation of said road, as well as the fixing and regulation of the toll and charges to be received by said company for the transportation of persons and property upon its road, were and are vested in a board of thirteen directors, to be chosen by the stockholders of said company in the manner provided by said charter, but that in and by the provisions of said charter it was and is expressly declared that no person should be qualified to be a director of said company unless he was the owner in his own right of at least twenty shares of the stock of said company; that the capital stock of said company should be divided into shares of fifty dollars each, thus making the ownership of stock in said corporation to the amount of a thousand dollars a prerequisite to a participation in the "Government and direction of the affairs of said company;" that said provision requiring a person exercising the power of a director to have a pecuniary and beneficial interest in the stock of said company was and is a wise and salutary one and designed and calculated to give confidence to persons investing in the stock or securities of said corporation; that said act creating said commission by its terms seeks to divest the board of directors provided for in said charter of some of their most important powers and responsibilities, and to transfer and vest them to and in a body of men not mentioned in or contemplated by said charter and not possessing the qualifications necessary to entitle them to a participation in the government and direction of the affairs of said company and who are expressly prohibited by said act of March 11th, 1884, from owning any stock or holding any pecuniary or beneficial interest in said company; that said act of March 11,
11 1884, thus virtually amends and alters said charter without
the assent of said company and, it is hereby distinctly affirmed, contrary to its desire or consent.

That said act of March 11th, 1884, unwarranted by and contrary to the principles of the common law, created a board of commissioners with visitatorial powers over this complainant; without the acquiescence and against the protest of this complainant, it seeks to subject this complainant to a species of visitation which could only be exercised by the State itself through the courts of justice, according to the course of the common law.

Notwithstanding the fact that the said act is contrary to the constitution of the State and of the United States, the defendants have executed the bond required by said act and have taken the oath of office and organized for the purpose of carrying said act into effect.

They have printed and distributed to the several railway companies in this State copies of said act and have demanded from them their "tariffs" of charges for transportation, as well domestic as foreign or interstate, and are proceeding deliberately towards the execution of said act. Indeed, as your orator is advised, believes, and charges, they could not do less and preserve inviolate their oaths required of them by the law of their being. If allowed to proceed further and to call your orator before them and revise their rates and entertain suits and complaints, they will subject your orator to a multiplicity of suits and great burdens in the way of costs, counsel fees, and expense, and so disarrange their business as to make it unprofitable. Indeed, the very passage of the act referred to has already seriously affected your orator and prevented the consummation of its financial arrangements at this juncture almost vital to its existence.

And your orator shows and charges that the said defendants, by their clerk, C. C. Campbell, have, in writing, notified your orator that they have organized as a board of railroad commissioners
12 and given your orator notice of the passage of said act of the
Legislature before mentioned by transmitting a copy of said acts to your orator, showing thereby a determination to enforce said acts, as your orator again charges and believes they will do, unless restrained by legal proceedings; that said notice is dated April 2d, 1884, and a true copy thereof is filed herewith, marked Exhibit "C," and is prayed to be taken as part of this bill of complaint; that said original act providing for said board of railroad commissioners was approved March 11th, 1884, and that your orator will, if defendants are not restrained until your orator may be heard in court, enforce the penalties provided therein in section 23d for non-compliance with the provision of section 6th of the act requiring your orator to report to defendants its tariff and submit it to such changes or alterations as may suit the views of defendants, and that by such changes or alterations of your orator's tariff work irreparable injury, since, as your orator charges and believes, said defendants are not experts in the business of conducting or managing a railroad and are wholly unfit, by reason of utter inexperience in the premises, to fix the rates of charges upon your orator's road, however desirous they may be to act with fairness; that the regulating of charges for freight and passage upon railroads requires great skill, experience, and practical knowledge of railroading, taxing to the utmost the capacity of the ablest men after years of study, experience, and constant attention; that defendants are wholly unacquainted with the subject of railroad tariffs and, however wise and prudent in other respects, are not fitted by a knowledge of the theory or practice of managing railroads to provide a tariff for your orator which will be otherwise than a crude and dangerous experiment.

The premises considered, your orator prays that the said John M. Stone, William B. Augustus, and William McWillie, railroad commissioners, be made defendants hereto and compelled to
13 to answer, &c.; that an injunction herein issue directed to
them and commanding them to refrain absolutely from any further or other proceeding for the enforcement of the said act of the Legislature against your orator, or from molesting or interfering in any way with your orator until the final hearing of this cause, and that on final hearing the said injunction be made perpetual.

May it please, &c.; and as in duty bound, &c.

WILL. T. MARTIN,
*President Natchez, Jackson & Columbus Railroad Company.*

Subscribed and sworn to before me this 9th day of April, A. D. 1884.

ALLISON H. FOSTER, *Clerk*,
By WALTER McCREA, *D. C.*

Original bill filed with exhibits "A," "B," & "C," and summons issued to Hinds, Madison, & Noxubee counties, April 12th, 1884.

W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

## EXHIBIT "A" TO BILL.

An act to provide for the regulation of freight and passenger rates on railroads in this State, and to create a commission to supervise the same, and for other purposes.

SECTION 1. Be it enacted by the Legislature of the State of Mississippi, That the track of every railroad in this State is a public highway, over which all persons have equal rights of transportation for passengers and freights on the payment of just compensation to the owner of the railroad for such transportation; and any person or corporation engaged in transporting passengers or freights over any railroad in this State who shall exact, receive, or demand more than the rate specified in any bill of lading issued by such person or corporation, or who for his or its advantage, or for the advantage of
any connecting line, or for any person or locality, shall make
14 any discrimination in transportation against any individual,
locality, or corporation shall be guilty of extortion.

SEC. 2. Be it further enacted, That the party injured may recover of the person or corporation guilty of extortion, as defined in this act, twice the amount of damages sustained by the overcharge or discrimination, as the case may be, in any court having jurisdiction of the amount, in any county where the person or corporation operating the railroad does business, and that such actions to recover damages under this act shall be commenced within ninety days after the cause of action accrues.

SEC. 3. Be it further enacted, That any person or corporation who shall commit extortion, as defined by this act, shall be guilty of a misdemeanor and, on conviction, shall be fined not less than ten nor more than five hundred dollars: Provided, That no action for damage shall be sustained for extortion or penalty inflicted for a violation of this act against any person or corporation who has previously submitted its passenger rates and schedule of freight charges to the railroad commission hereinafter established, and which has been approved by said commission and complied with by said railroad company.

SEC. 4. Be it further enacted, That a commission is hereby created, to consist of three (3) commissioners, whose qualifications shall be the same as the general qualifications required by law for other State officers, to be known as the railroad commission of the State of Mississippi, whose term of office shall be two years, and until their successors are appointed and qualified, and said commissioners shall each take the oath prescribed by law for other State-, of — thousand dollars, payable to the State of Mississippi, with two or more good sureties, to be approved by the Governor, for the faithful performance of these duties as such commissioners, and said bond shall be filed in the office of the secretary of State, and thereupon the Governor shall issue commissions accordingly.

15 Sec. 5. Be it further enacted, That immediately after the passage of this act, the Governor, with the advice and consent of the senate, shall appoint said railroad commissioners; and if vacancies occur by death, resignation, or otherwise, when the Legislature is not in session, such vacancies shall be filled by appointment to be made by the Governor, such appointees to hold their office until the next meeting of the Legislature thereafter, when their successors shall be appointed as herein provided. The salary of each commissioner shall be two thousand five hundred dollars per annum, to be paid from the State treasury in the manner provided by law for the salary of other State officers, and the commission may employ a clerk at a salary not to exceed fifteen hundred dollars, to be paid in like manner. No person in the employ of any railroad corporation, nor any person owning or operating a railroad in this State, or owning any stock in any railroad corporation, shall be eligible to the office of commissioner of railroads; and any commissioner herein provided for who shall, directly or indirectly, accept any gift, gratuity, emolument, or employment from any person or corporation owning or operating any railroad, during his continuance in office, shall forfeit his office and may be impeached and removed from office for that cause, as well as for any of the causes specified by law for the impeachment of other State officers, and shall be subject to a criminal prosecution and, upon conviction, fined not less than one thousand nor more than ten thousand dollars, or imprisoned in the State penitentiary not less than one nor more than ten years, or both such fine and imprisonment at the discretion of the court: Provided, That nothing in this act shall be so construed as to prevent said commissioners or the clerk from accepting free transportation while traveling in the discharge of these duties.

Sec. 6. Be it further enacted, That it shall be the duty of all persons or corporations who shall own or operate a rail-
16 road in this State, within thirty days after the passage of this
act, to furnish the commissioners with its tariff of charges for transportation of every kind, and it shall be the duty of said commission to revise said tariff of charges so furnished and determine whether or not and in what particular, if any, said charges are more than just compensation for the services to be rendered, and whether or not unjust discrimination is made in such tariff of charges against any person, locality, or corporation, and when said charges are corrected, as approved by said commission, shall then append a certificate of its approval to said tariff of charges; but in revising or establishing any and every tariff of charges it shall be the duty of said commission to take into consideration the character and nature of the service to be performed and the entire business

of such railroad, together with its earnings from the passenger and other traffic, and shall so revise such tariffs as to allow a fair and just return on the value of such railroad, its appurtenances and equipments; and it shall be the duty of said commission to exercise a watchful and careful supervision over every such tariff of charges and continue such tariff of charges from time to time as justice to the public and each of said railroad companies may require, and to increase or reduce any of said rates according as experience and business operations may show to be just; and said commission shall accordingly fix tariffs of charges for those railroads failing to furnish tariffs as above required. And it shall be the duty of said railroad companies, or persons operating any railroad in this State, to post at each of its depots all rates, schedules, and tariffs for the transportation of passengers and freights, made or approved by said railroad commission, with said certificate of approval, within ten days after said approval, in some conspicuous place at such depot; and it shall be unlawful for any such person or corporation to make any rebate or reduction from such tariff in favor of any person, locality, or corporations which shall not be made in favor of
17 all other persons, localities, or corporations by a change in such published rates, except as may be allowed by the commission; and when any change is contemplated to be made in the schedule of passenger or freight rates of any railroad by the commission said commission shall give the person or corporation operating or managing said railroad notice in writing, at least ten days before such change, of the time and place at which such change will be considered.

SEC. 7. Be it further enacted, That any person or corporation, as aforesaid, who shall make any reduction or rebate prohibited by this act, without the approval of the commission, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten nor more than five hundred dollars.

SEC. 8. Be it further enacted, That this act shall not prevent any railroad company from transporting freight or persons free of charge or at reduced rates for any religious, charitable, or benevolent purpose, or for any industrial exposition, fair, or association of a public nature, or for transporting immigrants into a State, or persons prospecting with a view of locating or bringing immigrants into this State, or for pleasure excursions.

SEC. 9. Be it further enacted, That it shall be the duty of said commission to hear all complaints made by any person against any such tariff or rates so approved on the ground that the same in any respect is for more than just compensation, or that such charges, or any of them, amount to or operate so as to effect unjust discrimination; such complaint must be in writing and specify the items in the tariff against which complaint is made; and if it appears to the commission that there may be justice in the complaint, or that the matter ought to be investigated, the commission shall forthwith furnish to the person or corporation operating the railroad a copy of the complaint, together with notice, which said notice shall be served as other legal process is now required by law to be served on

18 railroad companies; that at a time and place stated in the notice the tariff as to said items will be revised by the commission, and at such time and place it shall be the duty of the commission to hear the parties to the controversy, in person or by counsel, or both, and such evidence as may be offered, oral or in writing, and may examine witnesses on oath, conforming to the mode of proceedings, as nearly as may be convenient, to that required of arbitrators, giving such time and latitude to each side and regulating the opening and conclusion of any argument as the commission may consider best adapted to arrive at the truth, and when the hearing is concluded the commission shall give notice of any changes deemed proper by them to be made to the person or corporation operating the railroad, provided in no instance shall any corporation, railroad or person be criminally or civilly liable for the making of any charge or discrimination whatever if the same is not in violation of the tariff of charges or rules and regulations prescribed by the commission.

SEC. 10. Be it further enacted, That said commission shall have an office at the capital, and shall meet there as often as business may require, and shall remain in session until all business before them is disposed of, and shall hold other sessions at such times and places at may be necessary for the proper discharge of their duties, or as the convenience of the parties, in the judgment of the commission, may require: Provided, That the clerk of said commission shall remain at the office at the capital and receive all official communications, unless he shall be by order of the commission in attendance at other session not held at the capital, as herein provided for.

SEC. 11. Be it further enacted, That all money paid out under this act shall be paid on warrant of the auditor to the treasurer, as by law provided, including such sum as may be necessary to procure office furniture, stationery and other office expenses, including rent of office of said commission, provided such office expenses
19 and rent shall not exceed five hundred dollars per annum, and also all actual transportation expenses of the commissioners and clerk.

SEC. 12. Be it further enacted, That every person or corporation operating a railroad in this State shall furnish the said commission with all the information required relative to the management of their respective lines, and particularly with copies of all leases, contracts, and agreements for transportation with express, sleeping-car, or other companies to which they are parties.

SEC. 13. Be it further enacted, That every railroad company, within twenty-four hours after the occurrence of any accident to a train, attended with serious personal injury, on any portion of its line within the limits of this State, give notice of the same to the railroad commissioners, who, upon information of such accident, may repair or dispatch one or more of their number to the scene of said accident and inquire into the facts and circumstances thereof, which shall be recorded in the minutes of their proceedings and embraced in their annual report.

SEC. 14. Be it further enacted, That the commission shall make annual reports to the Governor on or before the first day of January in each year, for transmission to the Legislature, of their doings for the year ending on the 30th day of September next preceding, containing such facts as will disclose the actual working of the railway system in this State, and such suggestions as to the general railroad policy of the State as may seem to them appropriate.

Sec. 15. Be it further enacted, That it shall be the duty of every railroad in this State to make quarterly returns of the business of said railroad to the railroad commission of Mississippi, which returns shall embrace all the receipts and expenditures of said railroad, and to be made according to the forms furnished by the said railroad commissioners for that purpose.

20 Sec. 16. Be it further enacted, That the quarterly returns herein provided shall be made as aforesaid within thirty days after the end of each quarter to which they relate, and any railroad company or persons operating any railroad in this State which shall fail or refuse to make the quarterly returns as provided for in this act shall forfeit to the State of Mississippi fifty dollars for every day of such refusal or neglect.

Sec. 17. That the said quarterly returns shall be sworn to by one or more officers of said company, or of the persons operating said railroad, who has knowledge of their truth, and any person knowingly swearing falsely to any statement in any of said quarterly reports shall be guilty of perjury.

Sec. 18. Be it further enacted, That it shall be the duty of the commissioners to inspect the depots of the railroads operated in this State and see that at least one comfortable and suitable reception room is provided at each depot for the use and accommodation of persons desiring and awaiting transportation over their line; and any railroad company failing or refusing to provide such room, after sixty days' notice from the commissioners to provide the same, shall be liable to a penalty of not less than fifty dollars for each day they so fail or refuse to provide such room; and said railroad company shall keep at all times in such reception rooms a bulletin board, which shall show the time of the arrival and departure of trains, and when any passenger train or other train for transporting passengers is delayed notice of same shall be made on said bulletin board for the information of passengers, stating as nearly as can be ascertained the extent of the delay and probable time of arrival.

Sec. 19. Be it further enacted, That the determination of every matter by said commission shall be in writing, and proof thereof shall be made by a copy of the same, duly certified to by the clerk of said commission; and whenever any matter has been determined
21 by said commission in the course of any proceeding before it relating to the regulation or supervision of any railroad in this State, and coming within the jurisdiction of such commission, proof of the fact of such determination, duly certified as aforesaid, shall be received in the courts of this State, or before any officers thereof, in all civil cases, as *prima facie* evidence that such determination was right and proper; and the record of the proceedings of said commission shall be deemed a public record,

and shall, at all reasonable times, be subject to the inspection of the public.

Sec. 20. Be it further enacted, That said commission or any one of said commissioners may, in the discharge of any of the duties imposed upon them by this act, administer oaths, take affidavits, and summon and examine witnesses under oath, in all matters coming before them; and if any person shall testify falsely, or make any false affidavit or oath, before said commission or before any of said commissioners, or before any officer, to any matter coming before said commission, he shall be deemed guilty of perjury and, upon conviction thereof, shall be punished according to law.

Sec. 21. Be it further enacted, That all summons for witnesses to appear before said commission or before any one or more of said commissioners and notices to persons or corporations shall be issued by one of said commissioners, and be directed to any sheriff, constable, or marshal of any city or town, who shall execute the same in his bailiwick, and make due return thereof as directed therein, under the penalties prescribed by law for a failure to execute and return the process of any court; and if any person duly summoned to appear and testify before said commission, or before any one or more of said commissioners, shall fail or refuse to appear and testify without a lawful excuse, or shall refuse to answer any proper question propounded to him by said commission or any of said
commissioners, or if any person shall obstruct said commis-
22 sion, or — more of said commissioners, in the discharge of
duty, or shall conduct himself in a rude, disrespectful, or disorderly manner before said commission or any one of them deliberating in the discharge of duty, such person shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than one thousand dollars.

Sec. 22. Be it further enacted, That witnesses summoned to appear before said commission shall be entitled to the same per diem and mileage as witnesses attending circuit courts, and witnesses summoned by said commission on its behalf shall be paid out of the State treasury on warrants to be drawn by the auditor upon the certificate of the commission showing the amount and items thereof to which such witness may be entitled; and witnesses summoned for any railroad shall be paid by such railroad.

Sec. 23. Be it further enacted, That if any railroad company, or person or corporation operating any railroad in this State, shall violate any of the provisions of this act or the tariff of charges as fixed by such commission, such company, person, or corporation shall be liable to a penalty of five hundred dollars for each violation not otherwise provided tor; such penalty may be recovered by an action, to be brought in the name of the State of Mississippi, in any county where such violation may occur or injury or wrong be done. The commission shall institute such action through the district attorney of the proper district, and no such suit shall be dismissed without the consent of the court and of said commission; and if any district attorney shall neglect for thirty days after notice to bring any such suit the commission may direct some attorney-at-law to bring the

same and his fee therefor shall be fixed by the court, and shall not exceed fifty per cent. of the amount collected; and the district attorney shall not interfere in such suit, and the same shall not be dismissed without consent as aforesaid: Provided, That in all trials
of cases brought for a violation of any tariff of charges as
23 fixed by the commission it may be shown in defence that
such tariff so fixed was unjust.

SEC. 24. Be it further enacted, That the remedies hereby given shall be regarded as cumulative to the remedies now given by law against railroad corporations, and this act shall not be construed as repealing any statute giving such remedies.

SEC. 25. Be it further enacted, That the provisions of this act shall apply to and include all persons, firms, and companies, and to all associations of persons, whether incorporated or otherwise, that shall operate a railroad in this State (street railways excepted).

SEC. 26. Be it further enacted, That hereafter the election of railroad commissioners shall be at such time, in such manner, and for such term as may be determined by the Legislature.

SEC. 27. Be it further enacted, That the schedules adopted by the commission for charges for transportation of persons and freight shall not be enforced against any railroad in this State before the first day of May, A. D. 1884.

SEC. 28. Be it further enacted, That this act shall take effect and be in force from and after its passage.

Approved March 11, 1884.

Filed April 12th, 1884.

W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

Exhibit "B," filed in this cause as follows:

OFFICE SECRETARY OF STATE, JACKSON, MISSISSIPPI.

I, Henry C. Myers, secretary of state, do hereby certify that the act hereto attached, entitled "An act supplemental to an act entitled an act to provide for the regulation of freight and passenger rates on r'r's in this State, and to create a commission to supervise the
same, and for other purposes," approved M'ch 11, 1884, is a
24 true and correct copy of the original now on file in this
office.

Given under my hand and the great seal of the State of Mississippi, hereunto affixed this 10th day of April, 1884.

HENRY C. MYERS,
*Secretary of State.*

An act supplemental to an act entitled "An act to provide for the regulation of freight and passenger rates on railroads in this State and to create a commission to supervise the same, and for other purposes," approved March 11th, 1884.

SEC. 1. Be it enacted by the Legislature of the State of Mississippi, That the act entitled an act to provide for the regulation of freight and passenger rates on railroads in this State and to create a commission to supervise the same, and for other purposes, approved March 11, 1884, shall not be so construed as to authorize said commission to require bulletin boards to denote the delay of trains noted therein, or to require the erection of station-houses in any case where, in their judgment the public travel does not make it necessary, nor shall said act be so construed as to require said commission to investigate or call upon any railroad company for rates or charges in transportation or travel from any point outside of this State to points outside of this State or in any way interfere with such rates of charges.

Approved March 11, 1884.

Filed April 12th, 1884.

W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

25 Exhibit "C," filed in this cause as follows:

Office Railroad Commissioners of the State of Mississippi.

J. M. Stone, chairman; W. B. Augustus, Wm. McWillie; C. C. Campbell, clerk.

JACKSON, *April 2d*, 1884.

Gen'l W. T. Martin, pres't N., J. & C. R. R. Co., Natchez, Miss.

SIR: I am directed by the railroad commissioners of the State of Mississippi to inform you that said commission met on Saturday, March 29th, 1884, and organized with Hon. J. M. Stone as chairman and C. C. Campbell, clerk. I am also directed to transmit to you a copy of the act creating said commission and an act supplemental thereto, and to respectfully invite your attention to the provisions of said acts.

Please be kind enough to acknowledge the receipt of the same and oblige,

Your ob't serv't, C. C. CAMPBELL, *Clerk*.

Filed April 12th, 1884.

W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

*Summons to Madison County.*

The State of Mississippi to the sheriff of Madison county, Greeting:

We command you hereby that you summon Jno. M. Stone, Wm. McWillie, and Wm. B. Augustus, if to be found in your county, so that they be before the chancery court to be holden in and for the
county of Hinds, at the court-room thereof, in the city of
26 Jackson, on the first Monday of May, 1884, to answer a bill
of complaint exhibited against you by the Natchez, Jackson
& Columbus Railroad Company, complainant, in our said court,

and further to do and receive what our said court shall have considered of in this behalf, and have then there this summons.

Witness W. T. Ratliff, clerk of said court, by his signature, and also the seal of said court, affixed at office in Jackson.

Issued the 12th day of April, 1884.

W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

Executed personally upon Wm. McWillie, railroad commissioner, by reading to him the within writ and handing him a true copy of the same this the 14th day of April, 1884.

J. A. REID, *Sheriff*,
By C. J. DANCY, *D. S.*

The following summons was issued in this cause, to wit:

The State of Mississippi to the sheriff of Noxubee county, Greeting:

We command you hereby that you summon Jno. M. Stone, Wm. McWillie, and Wm. B. Augustus, if to be found in your county, so that they be before the chancery court to be holden in and for the county of Hinds, at the court room-thereof, in the city of Jackson, on the first Monday of May, 1884, to answer a bill of complaint exhibited against you by the Natchez, Jackson, & Columbus Railroad Company, complain*ing*, in our said court, and further to do and receive what our said court shall have considered of in this behalf, and have then there this summons.

Witness W. T. Ratliff, clerk of said court, by his —, also the seal of said court, affixed at office in Jackson.

Issued the 12 day of April, 1884.

W. T RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

27 I have executed this writ personally on the within Wm. B. Augustus by delivering to him a true copy of this writ April 14th, 1884.

B. M. WALKER,
*Sheriff of Noxubee Co., Miss.*

Jno. M. Stone and Wm. McWillie cannot be found in my county after diligent search, nor do they reside in my county.

April 14, 1884.

B. M. WALKER, *Sh'ff.*

The following summons was issued in this cause, to wit:

The State of Mississippi to the sheriff of Hinds county, Greeting:

We command you hereby that you summon Jno. M. Stone, William McWillie, and Wm. B. Augustus, if to be found in your county, so that they be before the chancery court to be holden in and for said county of Hinds, at the court-room thereof, in the city of Jackson, on the first Monday of May, 1884, to answer a bill of complaint exhibited against you by the Natchez, Jackson & Columbus Railroad Company, complainants, in our said court, and further to do and receive what our said court shall have considered of in this behalf, and have then there this summons.

Witness W. T. Ratliff, clerk of said court, by his —, and also the seal of said court, affixed at office in Jackson.

Issued the 12th day of April, 1884.

[SEAL.]

W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

Received April 12th, 1884.

S. B. THOMAS, *Sh'ff*,
By A. G. LEWIS, *D. S.*

Executed by delivering to C. C. Campbell, clerk of the board of R. R. commissioners, a true copy of this summons this April 12th, 1884.

S. B. THOMAS, *Sh'ff*,
By A. G. LEWIS, *D. S.*

28 In the Chancery Court of Hinds County, First District. In Vacation.

N., J. & C. RAILROAD COMPANY
*vs.*
JOHN M. STONE & Others, Railroad Commissioners of Mississippi.

On reading & filing the bill in said cause, it is ordered that the defendants refrain from any further or other proceedings against the complainant under and according to the provisions of an act of the Legislature of the said State entitled "An act for the regulation of freight and passenger rates on railroads in this State, and to create a commission to supervise the same, and for other purposes," until the further order of the court in said cause or of the chancellor; and it is further ordered that the motion for an injunction herein be, and the same is hereby, set for hearing, at the city of Jackson, on the 28th day of April, A. D. 1884, and that a copy of this decretal order be delivered by complainant to the defendants or their secretary.

Ordered this 11th day of April, A. D. 1884.

E. G. PEYTON, *Chancellor.*

A true copy from the original on file in my office at Jackson, Miss., this April 12th, 1884.

W. T. RATLIFF, *Cl'k*,
By A. G. MOORE; *D. C.*

Received April 12th, 1884.

S. B. THOMAS, *Sh'ff*,
By A. G. LEWIS, *D. S.*

Executed by delivering to C. C. Campbell, clerk of the board of R. R. commissioners, a true copy of this decretal order this April 12, 1884.

S. B. THOMAS, *Sh'ff*,
By A. G. LEWIS, *D. S.*

29 The following motion was filed and entered in this cause on this 28th day of May, A. D. 1884, to wit:

N., J. & C. R. R. COMPANY
*vs.*
JNO. M. STONE & Others, R. R. Com'rs.

Motion by complainant on bill and exhibits for an injunction as prayed.

NUGENT & McWILLIE, *Sol's.*

Filed and entered May 28th, 1884.

W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

Know all men by these presents that we, The Natchez, Jackson & Columbus Railroad Company, as principal, and Joseph H. Carpenter & Louis Botto and William L. Nugent, as securities, are held and firmly bound unto John M. Stone, William B. Augustus, and William McWillie, railroad commissioners, and their successors in office, in the penal sum of one thousand dollars; to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 28th day of May, A. D. 1884.

The condition of the obligation is such that whereas in a certain cause pending in the chancery court in and for the first district of Hinds county, wherein the above-bound railroad company is complainant and the above-named Stone, Augustus, & McWillie, the railroad commission of Mississippi, are defendants, the Hon. E. G. Peyton, chancellor, has awarded to the complainant an injunction as prayed for in its bill, to be issued upon the execution of this bond:

Now, therefore, if the above-named Natchez, Jackson & Columbus Railroad Company shall pay all damages and costs which may be
awarded against it, or which the said defendants may suffer
30 or sustain by reason of the suing out of said injunction in
case the same shall be dissolved, then this obligation to be void; otherwise to remain in full force.

WILL T. MARTIN,
*Pres't N., J. & C. R. R. Co.*
J. N. CARPENTER. [L. S.]
LOUIS BOTTO. [L. S.]
WM. L. NUGENT. [L. S.]

Attest: JOS. N. KERN, *Sect'y.*

Approved and filed May 28th, 1884.

W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

STATE OF MISSISSIPPI, } *To wit.*
*Hinds County,* }

Chancery Court.

To Jno. M. Stone, Wm. McWillie, and Wm. B. Augustus, the railroad commission of Mississippi, Greeting:

Whereas it hath been represented to us in our said court of chancery on the part of Natchez, Jackson & Columbus Railroad Co., complainants, that they have lately exhibited their bill against you, defendants, to be relieved touching the matters in said bill contained:

We, therefore, in consideration of the premises and of the allegations in said bill contained, strictly enjoin you, the said Jno. M. Stone & others, commissioners, under the penalty of one thousand dollars, to be levied of your goods and chattels, lands and tenements, to our use, that you absolutely refrain from any further or other proceeding for the enforcement of an act of the Legislature of said State entitled "An act to provide for the regulation of freight and passenger rates in this State, and to create a commission to supervise the same, and for other purposes," approved the — day of ——, 1884, against the complainant and from molesting or interfering in any way with the complainant in the conduct of its business as a carrier of persons and property over its railroad; and from any further proceedings against the said complainant touching any of the
31 matters in said bill contained until our said court shall make
another order to the contrary.

Issued the 28th day of May, 1884.

To the sheriff of Hinds county to execute and return.

[L. S.] W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

Rec'd May 28th, 1884.

S. B. THOMAS, *Sh'ff*,
By L. F. CHILES, *D. S.*

Executed by delivering to C. C. Campbell, clerk of the board of R. R. commissioners, a true copy of this writ this May 28th, 1884.

S. B. THOMAS, *Sheriff*,
By A. G. LEWIS, *D. S.*

The following summons was issued in this cause, to wit:

The State of Mississippi to the sheriff of Hinds county, Greeting:

We command you hereby that you summon Jno. M. Stone, Wm. B. Augustus, and Wm. McWillie, the railroad commission of Mississippi, if to be found in your county, so that they be before the chancery court to be holden in and for the county of Hinds, at the courtroom thereof, in the city of Jackson, on the second Monday of September, 1884, to answer a bill of complaint exhibited against you by the Natchez, Jackson & Columbus Railroad Co., complainant, in our said court; and further, to do and receive what our said court shall have considered of in this behalf; and have then there this summons.

Witness W. T. Ratliff, clerk of said court, by his signature, and also the seal of said court affixed at office in Jackson.

Issued the 28th day of May, 1884.

[L. S.] W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

Rec'd May 28th, 1884.

S. B. THOMAS, *Sh'ff*,
By L. F. CHILES, *D. S.*

Executed by delivering to C. C. Campbell, clerk of the board of R. R. commissioners, a true copy of this writ this May 28, 1884.

S. B. THOMAS, *Sh'ff*,
By A. G. LEWIS, *D. S.*

32 The following demurrer was filed in this cause, to wit:

STATE OF MISSISSIPPI, *Hinds County:*

Chancery Court. Sept. Term, 1884.

NATCHEZ, JACKSON & COLUMBUS RAILROAD COMPANY
*vs.*
MISSISSIPPI RAILROAD COMMISSIONERS.

The demurrer of J. M. Stone, W. B. Augustus, and William McWillie railroad commissioners of the State of Mississippi, to a bill of complaint exhibited against them in the chancery court of Hinds county by the Natchez, Jackson & Columbus Railroad Company.

The said defendants demur to the said bill and pray the judgment of the court if they shall make any further answer thereto, and they show the following causes of demurrer, to wit:

1st. The allegations of bill do not entitle the complainants to the relief sought.

2d. The laws of Mississippi are not in conflict with the Constitution of the United States or of the State of Mississippi, but are consistent therewith and such as the Legislature of the State had the right and authority to enact.

3d. There is no equity upon the face of the bill.

4th. Said bill is in other respects vague, uncertain, and insufficient.

JNO. W. C. WATSON,
*Sol'r for Def'ts.*

I hereby certify that, in my opinion, the foregoing demurrer is maintainable.

JNO. W. C. WATSON,
*Sol'r for Def'ts.*

Filed June 23d, 1884.

W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

33 The following order overruling demurrer was filed in this cause:

In the Chancery Court, First District, Hinds Co. September Term, A. D. 1884.

NATCHEZ, JACKSON & COLUMBUS RAILROAD COMPANY
*vs.*
J. M. STONE *et al.*, Railroad Commissioners of Mississippi.

This cause came on this day to be heard upon the demurrer of defendants to the complainants' bill; and the court, being thereof sufficiently advised, doth order, adjudge, and decree that the said demurrer be, and the same is hereby, overruled, and that the defendants answer said bill; and thereupon, the defendants in open court declining to answer said bill, it is ordered, adjudged, and decreed that the several allegations of said bill be, and the same are, taken for confessed as to them, and that the injunction heretofore issued in the cause be, and the same is hereby, perpetuated.

Ordered, adjudged, and decreed this 15 day of September, A. D. 1884.

E. G. PEYTON, *Chancellor.*

Filed & entered September 15th, 1884.

W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

The following petition for appeal was filed in this cause, to wit:

In the Chancery Court, Hinds County, 1st Judicial District. September Term, A. D. 1884.

NATCHEZ, JACKSON & C. R. R. CO.
*vs.*
J. M. STONE, WM. MCWILLIE, & W. B. AUGUSTUS, R. R. Coms., &c.

To the clerk of the chancery court:

The defendants in the above-entitled cause feeling aggrieved at the judgment of the court herein at a former term of said court
34 pray an appeal to the honorable the supreme court of the State of Mississippi, and as in duty bound will ever pray.

J. W. C. WATSON,
*Att'y for Com'rs.*

Filed Sept. 15th, 1884.

W. T. RATLIFF, *Clerk.*

## *Certificate of Clerk to Record.*

THE STATE OF MISSISSIPPI, *Hinds County:*

I, W. T. Ratliff, clerk of the chancery court in and for said county and State, do hereby certify that the foregoing — pages contain a true and complete transcript of all the pleadings and proceedings in said cause as the same appears on file and of record in our said court.

Given under my hand and seal of office, at Jackson, Mississippi, this 17 day of September, A. D. 1884.

[Seal of the Chancery Court.]

W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

The foregoing transcript was endorsed as follows: No. 4691. J. M. Stone *et al.*, R. R. commissioners, *v.* Natchez, Jackson & Columbus Railroad Company. Filed Oct. 20, 1884. Oliver Clifton, clerk.

35 And on the 21 day of October, 1884, there was filed in said cause a citation in words and figures as follows, to wit:

The State of Mississippi to the sheriff of Hinds county, Greeting:

You are hereby commanded to summon Natchez, Jackson & Columbus Railroad Company, if to be found in your county—if not, then Nugent and McWillie, attorneys of record—to be and appear before the judges of the supreme court of said State on the third Monday of October next, at the court-room in the city of Jackson, then and there to answer an appeal taken out by Jno. M. Stone *et al.*, railroad com'rs, to revise decree of the chancery court of said county rendered on the 15 day of September, A. D. 1884, in a certain case wherein the Natchez, Jackson & Company — complainant and Jno. M. Stone *et al.*, railroad commissioners, — defendants.

Herein fail not, and have you then and there this writ.

Witness the Hon. J. A. P. Campbell, presiding judge of the supreme court, the third Monday of October, 1884, and seal of the chancery court of said county of Hinds, and issued by the clerk thereof the 15 day of October, 1884.

[Seal of the Chancery Court.]

W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

Endorsed by the sheriff as follows: Rec'd Oct. 15, 1884. S. B. Thomas, sh'ff. Executed upon Nugent & McWillie Oct. 15, '84. S. B. Thomas, sh'ff. Supreme court. October term, 1884.

36 And on the 10 day of November, 1884, there was filed in said cause in said supreme court the following assignment of error, to wit:

Supreme Court of Mississippi. October Term, A. D. 1884.

J. M. Stone *et al.*, R. R. Commissioners, *vs.* Natchez, Jackson & Columbus R. R. Co. } 4691.

The last Legislature passed two acts—one entitled "An act to provide for the regulation of freight and passenger rates on railroads in this State and to create a commission to supervise the same, and for other purposes," approved March 11, 1884, and the other "An act supplemental to" said above-specified act, approved March 15, 1884. (Session Acts 1884, ch. 23 and 24.)

Thereupon the appellee filed a bill in chancery against the commission created by said acts, alleging that said acts were unconstitutional and therefore nullities, and praying that said commission might be perpetually enjoined from all proceedings under said acts.

To this bill the defendants, the commissioners, demurred. The court overruled the demurrer; and defendants refusing to plead over, a final decree in accordance with the prayer of the bill was rendered in the case, and from this decree the case is brought to this court by appeal.

The error assigned is that said acts are constitutional, and should have been so held by the court below and the bill dismissed.

Respectfully,

WATSON, GEORGE & CATCHINGS,
*For Appellants.*

Endorsed: No. 4691. 1st district. Filed Nov. 10, 1884. Oliver Clifton, clerk, by C. C. Campbell, D. C.

37 And on Tuesday, November 11, 1884, a day of the October term, 1884, of said supreme court, the following order was entered in said cause, to wit:

J. M. Stone *et al.* *v.* Yazoo & Mississippi Valley Railroad Co. } 4681.

and

J. M. Stone *et al.*, R. R. Com'rs, *v.* Natchez, Jackson and Columbus Railroad Co. } 4691.

Argued orally by Mr. Jno. W. C. Watson, for the appellants, and Mr. James Fentress, for the Yazoo & Mississippi Valley Railroad Co.

And on Wednesday, November 12, 1884, a day of the October term, 1884, of said court, the following order was entered in said cause, to wit:

J. M. STONE *et al.*
*v.*
YAZOO & MISSISSIPPI VALLEY RAILROAD CO. } 4681.

and

J. M. STONE *et al.*, R. R. Com'rs,
*v.*
NATCHEZ, JACKSON AND COLUMBUS RAILROAD CO. } 4691.

Argued orally by Mr. W. P. Harris, for the Yazoo & Mississippi Valley Railroad Co., and Mr. W. L. Nugent, for the Natchez, Jackson and Columbus Railroad Co., and Mr. Jno. W. C. Watson, for the appellants, and submitted on briefs by Mr. Jno. W. C. Watson and Mess. James Fentress, W. P. Harris & Nugent & McWillie, for the respective parties.

And on Monday, April 20, 1885, a day of the regular April term, 1885, of said court, the following final judgment was entered herein, to wit:

38 J. M. STONE *et al.*, Railroad Commissioners.
*v.*
NATCHEZ, JACKSON AND COLUMBUS RAILROAD COMPANY. } 4691.

This cause having been submitted at a former term of this court on the record herein from the chancery court of Hinds county, 1st district, and this court having sufficiently examined and considered the same and being of opinion that there is error therein, doth order, adjudge, and decree that the decree of said chancery court rendered in this cause at the September term thereof, A. D. 1884, on the 15 day of September, 1884, be, and the same is hereby, reversed and the bill dismissed, and that the appellee do pay the costs of this cause in this court and in the court below, to be taxed, &c.

39 *Opinions of Supreme Court.*

THE RAILROAD COMMISSION
*vs.*
YAZOO AND MISSISSIPPI VALLEY RAILROAD CO.

Campbell, C. J., delivered the opinion of the court.

It is claimed that the act creating the railroad commission is a violation of article 1, section 8, of the Constitution of the United States, which vests in Congress power "to regulate commerce * * * among the several States," because the railroad of the appellee connects at Jackson, Mississippi, with the railroad system of the country, and at Yazoo City with the waterways, and its interstate and local commerce and interests are inseparable without ruin. The question thus presented is, How far is the State disabled by the constitutional provision quoted from governing railroads within its limits as to fares and freights?

There is no denial of the power of Congress "to regulate commerce * * * among the several States," for that is plainly conferred. But, what is it to regulate commerce? Prescribing rates of compensation for service rendered by a railway company does not appear to us to be regulating commerce. The right to compensation is an essential attribute of such a corporation. It is the power to exist. Prescribing rates is providing for the existence of the artificial being. It is breathing into it the breath of life, that it may become a living being. The power to do this belongs to the sovereignty that may create corporations and shape their being and define their functions. It must be the State. Its power to create corporations for the various purposes of business and commerce has been uniformly exercised and never questioned. If it may create such corporations it may determine their attributes and prescribe what they may charge for services rendered as well as the other conditions of their existence. This belongs to the sovereignty of the State and is essential to the regulation of its internal police, and has not been surrendered to Congress. People *v.* Babcock, 11 Wend., 587; Freeholders *v.* The State, 4 Zabriskee, 718. It is the sovereign power to govern the institutions of the State and is not regulating commerce. It would seem to belong to the State alone, whose creature the corporation is, and whose right to shape its being in this essential attribute pertains to it, because it is its creature; and such we understand to be the doctrine of the Supreme Court of the U. S. as announced in Railroad Co. *v.* Maryland, 21 Wall., 456, and other decisions.

The principle supporting the decision in Railroad Co. *v.* Maryland is the right of a State as a sovereign to regulate and control the rate of transportation over its creature—the railroad built under a charter by the State. It is recognized by the opinion of the court that, in the very nature of things, the State must have control of the rates over highways of its own creation, even though to exercise this power involves consequentially an imposition on persons and property carried from State to State. The railroad extended from Baltimore to Washington, and the State required payment to it of a fixed portion of all money derived by the company from carrying passengers from Baltimore to Washington city, and the question was whether this exaction by the State in the charter of the company was "a restriction of free intercourse and traffic between different States," and it was declared not to be such. The plain assumption was that unless the provision in the charter was a restriction of free intercourse and traffic it was clearly within the legitimate power of the State. It was said by the court "that the power to charge for transportation and the amount of the charge are absolutely within the control of the State," and "this unlimited right of the State to charge or authorize others to charge toll, freight, or fare for transportation on its roads, canals, and railroads arises from the simple fact that they are its own works or constructed under its authority; it gives them being. It has a right to exact compensation for their use. It has a discretion as to the amount of that compensation." Attention was called by the opinion to
the fact that when the Constitution was adopted transpor-
40 tation on land was performed entirely on common roads
and in vehicles drawn by animal power, and that "no one

at that day imagined that the roads and bridges (except when the latter crossed navigable streams) were not entirely subject, both as to their construction, repair, and management, to State regulation and control. They were all made either by the States or under their authority. The power of the State to impose or authorize such tolls as it saw fit was unquestioned. No one then supposed that the wagons of the country, which were the vehicles of this commerce, or the horses by which they were drawn, were subject to national regulation. The movement of persons and merchandise, so long as it was as free to one person as to another, to the citizens of other States as to the citizens of the State in which it was performed, was not regarded as unconstitutionally restricted and trammeled by tolls exacted on bridges or turnpikes, whether belonging to the State or to private persons."

There is far more reason for denying authority to the State and claiming it for Congress as to the common roads which cross State lines than as to railroads. They are much more numerous than railroads; their freedom from restriction is more important as affecting commerce on the borders of States than the freedom of railroads.

So in Hall *v.* De Cuir, 95 U. S., 485, the statute of Louisiana requiring common carriers of passengers to give all persons travelling in that State upon the public conveyances employed in such business equal rights and privileges in all parts of the conveyance, without distinction or discrimination on account of race or color, was held to be a regulation of commerce and void, even within the State, so far as it affected vessels plying the waters of the Mississippi river between different States. The reason was the steamboat was enrolled and licensed under the laws of the United States and engaged as a regular packet between different States upon the navigable waters of the United States. The vessel was, in a sense, an institution of the United States, deriving its right to pursue its business from the United States and navigating the national highway common to all and not the property of private persons or deriving its existence from a State. As Congress had regulated the business by providing for licensing vessels and leaving the licensee free and untrammeled as to the accommodations of passengers, and as by the common law it pertains to the business of a common carrier to make reasonable and suitable regulations as regards passengers, it was held that Louisiana had no right to add a requirement not imposed by Congress, which in regulating the matter had left the common law in force as to this. As it belonged to Congress to legislate on this matter, and it had done so, the action of the State was unauthorized and void wherein it added to the requirements of Congress. Under the acts of Congress and the common law with reference to which they were enacted the licensed carrier might adopt its own reasonable regulations for the accommodation of passengers. The statute of Louisiana abridged this right and hindered its free exercise. It violated the privilege of a grantee of the United States, and therefore was declared to be of no effect. This seems to us the true foundation of that decision. It was said by the Chief Justice in delivering the opinion that "State legislation which seeks to impose a direct burden upon interstate commerce or interfere directly with its freedom does encroach upon the exclusive power of Congress." We adopt this view and hold that even in prescribing rates of compensation, which pertains exclusively to the State authority, as we believe, if a direct burden was laid upon interstate commerce or a direct inteference with its freedom was attempted it would necessarily fail because of the absence of power in a State, in a view of the Constitution of the United States, to obstruct the freedom of commerce among the States.

Our view is that the State may regulate rates, but cannot, in the exercise of this power, obstruct the freedom of commerce among the several States.

In the opinion cited a distinction is drawn between acting "upon the business through the local instruments to be employed, after coming within the State," and acting "directly upon the business as it comes into the State from without or goes out from within." This seems to be a full recognition of the distinction we have endeavored to draw between the local instruments of commerce existing by authority of a State and within its limits and the commerce which may be carried on over them. Grant that wherever commerce goes,
whether by land or on water, the power of Congress goes to
41 secure its freedom from hindrance or discrimination by State
authority, and it still remains true that the local instrument and vehicle of commerce, deriving its being from the authority of the State, is subject to its regulation in the essential attribute of earning a support, and continuing to perform its functions, and accomplish the end of its creation, and that the only limitation of the power of the State with reference to commerce among the States is to abstain from any obstruction of its freedom or any burden upon it.

It may be conceded that State law requiring companies to give equal accommodations on cars going from State to State to all passengers would fall under the condemnation of the decision in Hall *v.* De Cuir, and it would not follow that State regulation of compensation for service must be denied, for there is a wide difference between the exercise of the right to live and act and those collateral matters which do not relate to the very existence of a being, but to its mere convenience.

Congress has not regulated railroads. They do not owe their existence to Congress. They do not operate by its license. They are State institutions and subject to State authority, in subordination to the constitutional inhibiton of any restriction by the State of the freedom of commerce among the several States; not absolute freedom, but such freedom as makes no distinction between the rights of persons and things because of locality. The constitutional provision being considered was designed to prevent each State from legislating with reference to its own interests, regardless of the interests of others. It should be so construed as to accomplish this end and should be limited to that.

Pensacola Telegraph Company *v.* West, 96 U. S., 1, was decided on the principle that a State may not obstruct or unnecessarily encumber an instrumentality of commerce and of government authorized by it.

In Lord *v.* Steamship Co., 102. U. S., 541, the act of Congress limiting the liability of the owner of any vessel navigating the high seas between parts of the same State in certain cases specified in the act was upheld as a valid exercise of the power of Congress to regulate commerce. In delivering the opinion the Chief Justice lays stress on the fact that the vessel, on her voyages between the ports of the State, entered on a navigation which was necessarily connected with other nations, because she went out of California and the United States and upon the ocean—the common property of all nations.

What analogy is there between a vessel navigating the ocean and a railroad situate wholly within a State but connecting at the State line with a railroad in another State? Does it arise from the fact that these connecting roads afford a track for trains of cars to be drawn from State to State? While the train is in one State it is subject to its jurisdiction. The instant the State boundary is crossed the jurisdiction of another State attaches. The right of each State to govern within its limits must be upheld. This right to govern is limited only by the Constitution of the State and of the United States. The contention now being examined is that government by the State within its limits of such railroads is denied because Congress has power to regulate commerce among the several States. The reply is that the local instrument or vehicle of commerce existing in the State by its authority, including the trains while in the State, are subject to all such regulations adopted by the State for their government as are not in their nature and effect an imposition upon or a hindrance of free intercourse and traffic between the States. The State cannot, in regulating rates or in any other manner, discriminate against persons or products of other States or countries, but it may govern all within its limits impartially and justly. In the State cars and cargo and passengers are amenable to its laws, although they will soon become subject to the laws of another State which possesses like power of control over them, subject to the constitutional restriction against burdening or hindering commerce. Any unauthorized restriction would fall by the silent operation of the Constitution of the United States, made effective through the courts; and it may be admitted that Congress could lawfully legislate on this matter to the extent necessary, in its judgment, to smooth the way of commerce carried on over railroads from State to State, as many contend, and still it would not follow that Congress can fix the rates of compensation for carriage in a State.

42 In Telegraph Co. *v.* Texas, 105 U. S., 460, it was decided that the business of a railroad or telegraph company "is commerce itself," and that a tax by the State for each message sent was unlawful as an imposition on messages sent beyond the State; but that is a widely different question from that of the right of a State to deal with the earning capacity of individuals or corporations.

Commerce among the different States must be free; not free from the cost of service, not to go without paying its way, but free from impositions on it, the necessary effect of which is to hinder it.

In Munn *vs.* Illinois, 94 U. S., 113, it was decided that the regulation of warehouses for the storage of grain owned by private individuals and situated in Illinois, although "used as instruments by those engaged in State, as well as those engaged in interstate commerce," was a thing of domestic concern and pertained to the State. The warehouses were declared to be no more a part of commerce itself than the dray or the cart by which, but for them, grain would be transferred from one railroad station to another. This utterance was as to the effect of the power of Congress to regulate commerce, and it is observable that the distinguished judge who delivered a dissenting opinion in that case did not place his dissent on the ground that Congress had the power to regulate the storage of grain in the warehouses.

This decision affirms the right of the State to regulate the business of one engaged in a public employment in that State, although that business consisted in storing and transferring immense quantities of grain in its transit from the fields of production to the markets of the world.

The regulation of a public employment conducted in a State by natural persons belongs to the State in whose jurisdiction they are. There can be no distinction between natural and artificial persons except this: Natural persons possess rights not conferred by the State, while corporations depend on the act of their creation for their rights and powers. They must exist and act as made by the authority which brings them into being.

The State, being the creator of a corporation, must determine its attributes and functions, and it must, from the necessity of the case, act in obedience to the law of its being.

The State may not invade the domain of Congress and regulate commerce among the several States in creating corporations any more than in any other way, but as it is for the State to create corporations, and as they cannot live without earning money, the power to earn it and the limit of their right in this respect must be subject to the regulation of the authority of the State, because it is not regulating commerce. It is incidentally or consequentially affecting it, perhaps, but to deal with the local instrument of commerce in a matter vital to its existence is not regulating commerce in the sense of the Constitution. It is providing for the very being of the corporation—just as the State protects the natural person in the enjoyments of all his rights.

Congress has supreme and, it may be conceded, exclusive power over commerce among the several States, and any attempt of the State to regulate this commerce or to fetter or burden or restrict it in any way is unconstitutional, but it is not everything which may incidentally or consequentially affect this commerce which is to be held void. A regulation of interstate commerce, as such, is prohibited, but power may be legitimately exercised by the State in many ways over the instruments of commerce among the States, and not be justly condemned. So long as there is no discrimination against persons and things carried across State lines, or attempt to so regulate such movement as to affect it because it is across the State boundary, it cannot be said that there is an unwarranted interference with commerce among the States.

The railroad commission is not a restriction or hindrance of the freedom of commerce, but is intended to facilitate it and smooth its way by removing hindrances. The fear is professed that the commission will cripple or destroy the instruments of commerce. If there is danger of this, that cannot make any difference so far as relates to the question now being discussed, because the creator may at pleasure destroy the work of its own power, unquestioned as to the right to do it.

In Peik *v.* Railway Co., 94 U. S., 164, it was held that the Legislature of the State of Wisconsin had the power to prescribe a maximum of charges to be made by a railroad company whose road was connected, by means of a bridge and a consolidation of companies, with a railroad in another State for transporting persons or property within the State or taken up outside the State
43 and brought within it or taken up inside the State and carried without. The right of the State was put on the ground of the absence of action by Congress on the subject, and, because of this, it was said the State could provide for the people within the State, even though it might indirectly affect those without. Of course, this reasoning implies the existence of power in Congress to regulate charges, which we question.

Congress has not attempted to regulate the charges to be made by railroad companies, and if the right of the State to act with reference to fares and freights carried across the boundaries of the State depends on the absence of Congressional action the right of the State must be upheld.

The authoritative declaration is that the power to regulate commerce among the several States is exclusively in Congress and denied to the States in all those cases where, from the nature of the subject, uniformity of regulation is required, and that as to these subjects the absence of Congressional legislation is equivalent to a declaration that there shall not be any regulation, and any State legislation in such cases must fall before the silent but efficient power of the Constitution.

We think that regulating rates for the transportation of persons and property does not fall within the class of matters requiring or admitting of uniformity. Perhaps no subject admits of and demands greater diversity with varying localities and circumstances justly affecting the value of service.

If a State should build and operate a railroad connected with the railway system and navigable waters of the country for revenue might Congress prescribe charges over it for persons and things en route beyond the limits of the State? May Congress regulate tolls and charges on the Erie canal connecting the navigable waters of the lakes with those in the East?

Section 6 of the charter of the appellee confers on the company power to fix, from time to time, by its board of directors the rates at which it will transport persons or property over its railroads, provided they shall not exceed a maximum specified in the act.

The power to contract is an essential attribute of sovereignty and is of prime importance. Its exercise has been productive of incalculable benefits to society, however great may be the evils incident to its injudicious employment. It cannot be denied merely because of its liability to abuse. The power to contract implies the power to make a valid contract. Chartering railroad companies and other similar associations has long been an acknowledged and a favorite exercise of legislative authority. The right to grant charters includes the right to grant such as will be upheld. Conferring power on the grantee of the franchise to fix rates of compensation at discretion or within prescribed limits fixed by the charter has been the common practice of the Legislatures of the States of the United States from an early period of their history. The right of the corporation to exercise the powers conferred by the act of incorporation, whether to fix rates themselves or to take those fixed by their charter, and to rest securely on its provisions in this respect, has hitherto been generally regarded as indisputable.

A grant in general terms of authority to fix rates is not a renunciation of the right of legislative control so as to secure reasonable rates. Such a grant evinces merely a purpose to confer power to exact compensation which shall be just and reasonable. It is only where there is an unmistakable manifestation of a purpose to place the unrestricted right in the corporation to determine rates of compensation that the power of the Legislature afterwards to interfere can be denied. It is not to be presumed that the right of legislative control was intended to be renounced. Every presumption is against that. If the grant can be interpreted without ascribing to the Legislature an intent to part with any power it will be done. Only what is plainly parted with is gone.

Fixing rates in a charter is a specification of what is reasonable—an exclusion of tacit or implied conditions on the subject. It is an essential part of the contract of incorporation—the most important condition of its existence—the inducing cause of its acceptance.

That it was the legislative intent to vest in the appellee the unrestricted right to fix rates within the limits prescribed by the charter is clear; that this was a valid contract by the State, obligatory and inviolable by it, we regard as settled authoritatively by Federal and State decisions too numerous for citation.

44 If anything is or ever can be settled in American constitutional law the sanctity and inviolability of a contract between a State and individuals, in the shape of a charter for a business enterprise, accepted and acted on by the corporators on the faith of its terms and provisions, must be so regarded.

The appellee has the unquestionable right, from time to time, by its board of directors, to fix the rates at which it will transport over its railroads, provided those rates shall not exceed the maximum prescribed by the charter; that is the contract. These terms were expressly made. On the faith of them capital was invested and the enterprise set on foot. It is not allowable now for one of the contract-ing parties to interfere with the exercise by the other of its plainly-granted rights. They are secure beyond the reach of legislation, and cannot be impaired. The State cannot, by an act of its Legislature, abdicate the right to govern artificial as well as natural persons, but it may create corporations, and, where they are not a part of the machinery of government, the franchise cannot be resumed by the Legislature, or its benefits be essentially impaired, without the consent of the grantee. To hold otherwise would be revolutionary and disturb the foundations of society as moulded by the judicial utterances of half a century of constitutional government in America.

While the rates at which the appellee will transport over its roads, not exceeding what is stipulated for in the charter, is for the determination of the appellee, and not subject to the control within the chartered limits of the State, it is indisputable that the State may create a commission or board by any name to see that the creature of the State keeps within its charter limits and violates none of its obligations as a common carrier.

Whatever the charter rights of the appellee, there are many police regulations the State may lawfully adopt, and it may commit their enforcement to any agency of its selection. It may entrust the oversight and supervision of the operations of railroads to a commission charged with the duty of guarding against abuses the State has the right to correct.

We do not feel called on to pass upon all of the numerous provisions of the act complained of, and will decide only so much as will properly dispose of this case, leaving other questions to be decided as they arise.

The bill is to restrain the commission "from interfering with the tariff of charges of (complainant) or with the operation, control, or income of said railroad * * * and from * * * any revision of orator's tariff or from instituting or aiding in the prosecution of suits for recovery of penalties under said acts or doing anything under said acts as to orator."

In view of what is written, it must be held that the railroad commission cannot interfere with the rate fixed by the board of directors of the appellee from time to time for transporting persons and property over its railroad, if those rates are within the limits prescribed by the charter, and that the commission cannot adopt any rule or regulation as to rates violative of the clearly expressed or necessarily implied charter rights of the company; but, while this is true, the commission may investigate the control and operation of the company in order to ascertain that it is conforming to its authorization by the charter. It may do many things contemplated by the act creating it without any violation of the inviolable rights of the company. No reason is perceived why the company may not be required to submit its tariff of charges to the commission in order that it may see that it conforms to the limits fixed by the charter.

So it may be said that the company has no right to make unjust discrimination or show partiality not authorized by its charter in transporting persons and things, and all this the commission may look after, and it may hear complaints as to any matter over which it has control as to the operation of the company.

We do not see why the appellee shall not be subject to the requirement of the 13th section of the act creating the railroad commission, and be bound to give notice, as required by that section, to the commissioners in case of any accident to a train attended with serious personal injury, and we think the appellee is subject to the 18th section of the act as to a suitable reception-room at each depot and as to bulletin boards.

Our view is that the right this company has secured by its charter to fix rates and to manage its affairs by a board of directors does not exempt it from such reasonable regulations as the State from time to time may see fit to adopt for the impartial government
45 of railroads in the State for the interest of the people.

This company may fix rates and collect them within the limits of its charter and may earn all it can within these limits, but it is a creature of the State, subject to its government and control, except wherein the State has renounced in plain terms its right of regulation and control. The rights of the company secured by its charter must be upheld, and the railroad commission must abstain from any interference with these rights; but outside of these bounds and as to all those legitimate requirements of legislative authority prescribed in the interest of the community and consistent with the full enjoyment of its contract rights by the company it must yield to the authority of the State to supervise it.

The act creating the railroad commission is not violative of the 14th amendment of the Constitution of the United States or of any provision of the constitution of the State in that it creates a commission and charges it with the duty of supervising railroads.

As before stated, we do not intend to express an opinion on all of the provisions of the act. Many questions may arise under it not necessary to be now disposed of, and we leave them for consideration when presented. We hold that the State had the right to create an agency of the State to exercise such supervision as it may lawfully employ over railroads within its limits, and have declared the immunity from interference secured to the appellee by its charter, and this is all that is necessary to dispose of this case.

Decree reversed and decree made here to modify the injunction in accordance with this opinion.

## THE RAILROAD COMMISSION
*vs.*
## THE NATCHEZ, JACKSON AND COLUMBUS RAILROAD CO.

Campbell, C. J., delivered the opinion of the court:

The views announced in Railroad Commission *v.* Yazoo and Mississippi Valley R. R. Co. dispose of all the objections of the appellee to the act creating the railroad commission, except as relates to the constitutional inhibition upon the State to pass any law impairing the obligations of contract.

The appellee is authorized by its charter "from time to time to fix, regulate, and receive tolls and charges by them to be received for transportation of persons and property." Annexed to every such grant is the implied condition that the charges shall be reasonable, because that is the limit of right imposed by the common law; and, as the power of the corporation is to be exercised in subordination to this tacit condition, it is competent for the Legislature to establish an agency to secure conformity by its creature to the standard of reasonableness. The appellee is not denied the right to fix, regulate, and receive just and proper charges for transportation. That right is secured to it by its charter, and is not infringed by the act creating a railroad commission. It remains unimpaired. All that has been attempted is to secure conformity to what is reasonable and proper. The creation of a public agency to stand between the railroad companies and those dealing with them, to see that the obligation of the former to be reasonable in their charges is duly observed, is not an infraction of any right. The final test of reasonableness of rates is not with the railroad commission, but, as before, with the Government, through its judiciary. Fixing rates by the commission is not final and conclusive against a railroad company. It is only *prima facie* correct, and may be tested in the courts. If the action of the commission is just it should prevail; if it is not it may be assumed that it will not. Of that none should complain. The concession made in the bill of the appellee of the right of judicial control to prevent extortion and unjust discrimination is an admission of the right of governmental control, and if the State can control or supervise at all it may select the agency through which to exert its right.

The appellee is not subject to the absolute control of the railroad commission or of the Legislature as to rates for transportation. It has rights which must be respected, and there has been no invasion of them. They are inviolate and inviolable.

This company must be permitted, as authorized by its charter, to fix, regulate, and receive tolls and charges; but this creature of the State must submit to the lawful authority of its creator and protector to supervise it, so as to guard against any abuse by it of its franchise, while it is protected in its fullest enjoyment.
46 Within the limit of its chartered rights it is safe from interference, but it has no right to escape the visitatorial power of the State to ascertain if it keeps within these bounds. Corporations, like natural persons, must yield to the authority of the State to govern, and while they may justly claim that they shall not be despoiled of their chartered rights they cannot be justified in a claim of immunity from the operation of such reasonable regulations as the State may adopt for their government in conformity to their charters.

Decree reversed and bill dismissed.

47 And afterwards, to wit, on the 8 day of August, 1885, there was filed with the clerk of said supreme court a petition for writ of error in words and figures following, to wit:

THE UNITED STATES OF AMERICA, *State of Mississippi:*

To the Hon. Tim. E. Cooper, chief justice of the supreme court of the State of Mississippi:

The petition of the Natchez, Jackson and Columbus Railroad Company respectfully shows unto your honor that on the 20 day of April, A. D. 1885, the said supreme court rendered a final decree against petitioner in a certain cause wherein John M. Stone, William B. Augustus, & William McWillie, railroad commissioners, were appellants and petitioner was appellee, reversing the decree of the court below, dismissing petitioner's bill of complaint, and awarding against them a recovery of all costs and execution therefor, as by reference to the record of said cause will fully appear. In said suit was drawn in question the validity of a statute of, or an authority exercised under, said State on the ground of their being repugnant to the Constitution of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution of the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, whereby petitioner is aggrieved and in consequence whereof it prays a writ of error, with citation and supersedeas, returnable to the Supreme Court of the United States on the second Monday in October next. As in duty bound, &c., will ever pray, &c.

NATCHEZ, JACKSON AND COLUMBUS
RAILROAD COMPANY,
By NUGENT & McWILLIE, *Att'ys.*

Let the writ of error issue as prayed.
August 6th, 1885.

TIM. E. COOPER,
*Chief Justice of the Supreme Court of the State of Mississippi.*

Filed Aug. 8, 1885.

OLIVER CLIFTON, *Cl'k,*
By C. C. CAMPBELL, *D. C.*

48 And on the same day, August 8, 1885, there was filed with said petition a writ of error bond in words and figures following, to wit:

Know all men by these presents that we, The Natchez, Jackson and Columbus Railroad Company, principal; James Surget and John C. Schwartz, sureties, are held and firmly bound unto John M. Stone, William B. Augustus, and William McWillie, railroad commissioners, in the full and just sum of twenty-five hundred dollars, to be paid to the said John M. Stone, William B. Augustus, and William McWillie, railroad commissioners, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this third day of August, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately at a term of the supreme court of the State of Mississippi, begun and held on the first Monday of April, A. D. 1885, in a suit depending in said court between John M. Stone, William B. Augustus, and William McWillie, railroad commissioners, of the one part, and the Natchez, Jackson and Columbus Railroad Company, of the other part, a final decree was rendered against the said Natchez, Jackson and Columbus Railroad Company, and the said Natchez, Jackson & Columbus Railroad Company having obtained a writ of error thereto and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said John M. Stone, William B. Augustus, and William McWillie, railroad commissioners, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Natchez, Jackson & Columbus Railroad Company shall 49 prosecute said writ of error to effect and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

WILL. T. MARTIN, [SEAL.]
*Pres't N., J. & C. R. R. Co.*
JAS. SURGET. [SEAL.]
J. C. SCHWARTZ. [SEAL.]

Approved by—
TIM. E. COOPER,
*Chief Justice.*

THE STATE OF MISSISSIPPI, *Adams County:*

Personally appeared before me, the undersigned, clerk of the chancery court in and for said county and State, the above-named James Surget and John C. Schwartz, who, being duly sworn, depose and say *they* severally that they are severally worth the sum of twenty-five hundred dollars in visible property, subject to execution, over and above all their just debts and legal exemptions.

JAS. SURGET.
JAS. C. SCHWARTZ.

Sworn to and subscribed before me this 3d day of August, A. D. 1885.

[SEAL.] ALLISON H. FOSTER,
*Clerk Chancery Court, M. C.*

Endorsed: Filed Aug. 8, 1885. Oliver Clifton, clerk, by C. C. Campbell, D. C.

And on the same day, August 8, 1885, there was filed with the clerk of said court a writ of supersedeas in words and figures following, to wit:

UNITED STATES OF AMERICA,
*Southern District of Mississippi*, } *ss*:

The President of the United States to John M. Stone, William B. Augustus, and William McWillie, railroad commissioners, Greeting:

You are hereby commanded forthwith to abstain and cease 50 from all proceedings on a final decree of the supreme court of the State of Mississippi rendered on the 20th day of April, A. D. 1885, in a suit therein, wherein you were appellants and the Natchez, Jackson and Columbus Railroad Company were appellees; to which said final decree the said Natchez, Jackson & Columbus Railroad Company has sued out a writ of error, returnable into the Supreme Court of the United States on the second Monday of October next, a copy of which writ has been duly lodged with the clerk of the supreme court of the State of Mississippi this 6 day of August, A. D. 1885, so that the matters in controversy in said suit shall remain in the same plight and condition in which they stood before the decree aforesaid was rendered.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 6th day of August, 1885.

Witness also James M. McKee, clerk of the circuit court of the United States for the southern district of Mississippi, with the seal of said court hereto affixed, this 6th day of August, A. D. 1885.

[SEAL.] JAS. M. McKEE, *Clerk*.

On this 8th day of August, A. D. 1885, personally appeared before me the subscriber hereof, Frank Lee, who, being duly sworn, states upon oath that he delivered a true copy of the within writ of supersedeas to Charles C. Campbell, secretary of the within-named railroad commissioners, on the day of the date hereof.

FRANK LEE.

Sworn to and subscribed the 8 day of August, A. D. 1885.

[SEAL.] ARCHY McGEHEE,
*U. S. Com'r So. Dist. Miss'i.*

Endorsed: Filed Aug. 8, 1885. Oliver Clifton, clerk, by C. C. Campbell, D. C.

51 State of Mississippi Supreme Court.

I, Oliver Clifton, clerk of the supreme court of Mississippi, do hereby certify that the foregoing pages contain a true and correct copy of the record and proceedings of said supreme court in the case of J. M. Stone *et al.*, railroad commissioners, *v.* The Natchez, Jackson and Columbus Railroad Company, No. 4691 (including the opinion of said court in the case of J. M. Stone *et al. v.* Yazoo and Mississippi Valley Railroad Company), together with copies of the "petition for writ of error," the "writ of error bond," and "supersedeas," as the same appear of record and on file in my office.

Witness my hand and the seal of said supreme court, hereunto affixed at office, at Jackson, this the 14th day of September, A. D. 1885.

[Seal State of Mississippi Supreme Court.]

OLIVER CLIFTON, *Clerk*,
By C. C. CAMPBELL, *D. C.*

52 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the *judges of the* supreme court of the State of Mississippi, Greeting:

Because in the record and proceedings as also in the rendition of the final decree before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between John M. Stone, William B. Augustus, and William McWillie, railroad commissioners, of the one part, and the Natchez, Jackson & Columbus Railroad Company, of the other part, wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity; and wherein was drawn in question the construction of a clause of the
53 Constitution of the United States and the decision was against
the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Natchez, Jackson & Columbus Railroad Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the sixth day of August, in the year of our Lord one thousand eight hundred and eighty-five. Witness also Jas. M. McKee, the clerk of the circuit court of the United States for the southern district of Mississippi, this 6th day of August, 1885, and also the seal of said court.

{ Seal U. S. Circuit Court, Southern District
of Mississippi, 5th Circuit. }

JAMES M. McKEE, *Clerk*.

Allowed by me, to operate as a supersedeas, this 6th day of Aug't, 1885.

TIM. E. COOPER,
*Chief Justice of the Supreme Court of the State of Mississippi.*

[Endorsed:] Writ of error. Filed Aug. 6, 1885. Oliver Clifton, clerk, by C. C. Campbell, D. C.

54 The United States of America to John M. Stone, William B. Augustus, and William McWillie, railroad commissioners, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Mississippi, wherein the Natchez, Jackson & Columbus Railroad Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the final decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this sixth day of August, in the year of our Lord one thousand eight hundred and eighty-five. Witness also Tim. E. Cooper, chief justice of the supreme court of the State of Mississippi.

{Seal U. S. Circuit Court, Southern District of Mississippi, 5th Circuit.}

JAS. M. McKEE,
*Cl'k U. S. Circuit Court, So. Dist. of Miss.*

55 On this 8th day of August, in the year of our Lord one thousand eight hundred and eighty-five, personally appeared before me, the undersigned, United States commissioner in and for the southern district of Mississippi, Frank Lee, the subscriber hereof, who, being duly sworn, makes oath that he delivered a true copy of the within citation to Charles C. Campbell, secretary of the within-named defendants in error, railroad commissioners, at his office in Jackson, Mississippi, on this day and year aforesaid.

FRANK LEE.

Sworn to and subscribed the 8th day of August, A. D. 1885.

[Seal Archy McGehee, U. S. Commissioner, Southern Dist. of Mississippi.]

ARCHY McGEHEE,
*U. S. Comm'r, So. Dist. Miss.*

[Endorsed:] N., J. & C. R. R. Co. *v.* John M. Stone *et al.*, railroad comm'rs. Citation.

56 In the Supreme Court of the United States. October Term, 1885.

THE NATCHEZ, JACKSON & COLUMBUS R. R. CO.
*v.*
THE RAILROAD COMMISSIONERS OF THE STATE OF MISSISSIPPI.

The appellants, by their attorney, come and say that manifest error has intervened to its prejudice in the record and proceedings of the supreme court of the State of Mississippi in the above-entitled cause, in this, to wit:

That said court erred in reversing the final decree of the chancery court of Hinds county (first district), rendered in said cause on the — day of ——, A. D. 1884, and dismissing the bill of complaint in said cause, whereas the said decree of the said chancery court should have been affirmed and the act of the Legislature of Mississippi in the bill mentioned held to be in violation of the Constitution of the United States, art. 1, sec. 10, impairing the obligation of the contract between the appellant company and the State as contained in appellants' charter.

Wherefore the appellants pray that the decree of said supreme court of Mississippi be reversed and said cause be remanded, with directions to said supreme court to enter a decree affirming the decree of said chancery court; and, as in duty bound, appellants will ever pray, etc.

W. L. NUGENT,
*Att'y for Appellants.*

[Endorsed:] N., J. & C. R. R. Co. *v.* The Railroad Commissioners, &c. Assign't of errors.

Endorsed on cover: Mississippi supreme court. No. 355. The Natchez, Jackson and Columbus Railroad Company, plaintiff in error, *vs.* John M. Stone, William B. Augustus, and William McWillie, railroad commissioners. Filed October 9, 1885.